



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201236037

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUN 13 2012

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer A	=
IRA B	=
Financial Institution C	=
Account D	=
Financial Institution E	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated June 2, 2011, as supplemented by correspondence dated March 13 and 29, 2012, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code"), regarding the distributions of Amount 1 and Amount 2 from IRA B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he took distributions of Amounts 1 and 2 from IRA B. Taxpayer A asserts that his failure to accomplish a rollover of Amounts 1 and 2 within the 60-day period prescribed by section 408(d)(3)(A) of the Code was the result of having been given incorrect advice.

Taxpayer A maintained IRA B, an individual retirement account under section 408(a) of the Code, with Financial Institution C. During 2010, anticipating the incurrence of emergency health care needs, Taxpayer A withdrew Amounts 1 and 2 from IRA B on June 25 and August 31, 2010, respectively. The funds

were deposited into Account D, a non IRA account, with Financial Institution E. However, the emergency health care needs did not materialize and the funds were no longer needed for that purpose. Taxpayer A represents that a retirement expert advised him that he had until the due date of his Form 1040 tax return (April 15, 2011) to redeposit Amounts 1 and 2 into an IRA in order for the amounts to be excludible from his gross income. Therefore, on April 15, 2011, Taxpayer A redeposited Amounts 1 and 2 back into IRA B with Financial Institution C.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amounts 1 and 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code

where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 402(c)(3)(B) and 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted in this case indicates that Taxpayer A withdrew Amounts 1 and 2 from IRA B with the stated intent of covering anticipated medical expenses.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period because of one of the factors enumerated in Revenue Procedure 2003-16, for example errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. In this instance, Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely roll over the distributions of Amounts 1 and 2. Taxpayer A has represented that a retirement expert misinformed him with respect to the period of time allowed to complete a rollover of IRA funds. Taxpayer A, however, is unable to provide the name of the retirement expert or his or her organization and has not presented any other evidence of such misinformation. Taxpayer A was capable of making himself aware of the rules and time frame for completing a rollover of Amounts 1 and 2. The information presented indicates that the inability of Taxpayer A to roll over Amounts 1 and 2 into an IRA within the 60-day period was, at all times, within the reasonable control of Taxpayer A.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distributions of Amounts 1 and 2 from IRA B.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), , at () .

Sincerely yours,

Carlton A. Watkins

Manager
Employee Plans Technical Group 1

cc: